

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 03-12379 MLW

EMORY ZIPPERER)
Plaintiff,)
)
v.)
)
RAYTHEON COMPANY, INC.)
Defendant.)
_____)

**DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Defendant Raytheon Company (“Raytheon”) hereby moves pursuant to Fed. R. Civ. P. 12(c) for judgment in its favor on the pleadings. As grounds for this motion Raytheon states:

- 1) The plaintiff's common law claims are based upon an alleged incorrect estimate of future pension benefits under the Raytheon Engineers & Constructors Retirement Plan (“the Plan”), an employee benefit plan governed by the Employee Retirement Security Act of 1974 (“ERISA”).
- 2) The plaintiff's claims – for negligence, equitable estoppel and negligent misrepresentation – are each preempted by ERISA. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987).
- 3) Even if the complaint is construed to include an ERISA claim, the plaintiff cannot assert any cognizable claim for damages.

WHEREFORE, Raytheon respectfully requests that this court enter judgment in its favor on the pleadings.

RAYTHEON COMPANY
By its attorneys,

/s/ Constance M. McGrane

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Dated: March 1, 2005

CERTIFICATION PURSUANT TO
LOCAL RULE 7.1

Pursuant to Local Rule 7.1, I hereby certify that I made a good faith effort to resolve the issues presented by the Motion for Judgment on the Pleadings by telephone conference on February 28, 2005.

/s/ Constance M. McGrane
Constance M. McGrane, Esq.